

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
LOIS GREENFIELD :

Plaintiff, :

- against - :

JILL PANKEY :

Defendant. :

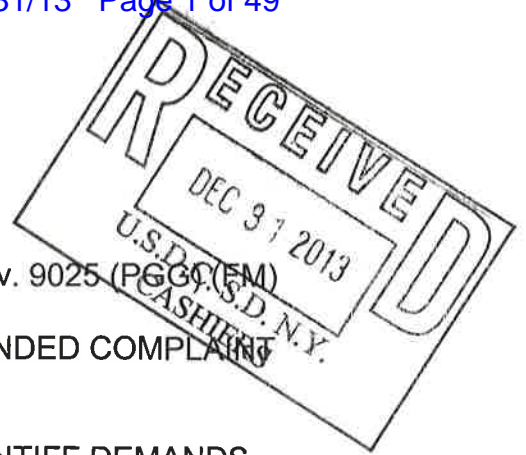
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13 Civ. 9025 (PGG)(FM)

AMENDED COMPLAINT

PLAINTIFF DEMANDS

TRIAL BY JURY



Plaintiff Lois Greenfield ("Ms. Greenfield"), by her attorneys, Tannenbaum Helporn Syracuse & Hirschtritt LLP, for her amended complaint, respectfully alleges:

### SUMMARY OF THIS ACTION

1. This is an action for copyright infringement arising from defendant's Jill Pankey's wholesale appropriation of thirty-three of Ms. Greenfield's copyrighted photographs.

2. Ms. Greenfield is one of this country's foremost dance photographers. She does not photograph dance performances. Instead, Ms. Greenfield directs and composes unique dance imagery in her studio instantly recognizable as her own.

3. Her photographs capture original and fleeting moments in dance that happen so quickly the eye cannot register them. All her photographs are in-camera, single-frame exposures that are never reconfigured with post-production techniques. We only "see" these moments in Ms. Greenfield's iconic photographs that have been widely admired for more than 30 years.

4. Jill Pankey ("Ms. Pankey") is a painter who shares Ms. Greenfield's love of dance.

5. Ms. Pankey, rather than simply drawing "inspiration" from Ms. Greenfield's photographs, has copied thirty-three of Ms. Greenfield's most creative images (collectively

“the “Photograph or Photographs”) onto at least twenty-one paintings (the “Painting” or Paintings”) that Ms. Pankey is selling in galleries, venues and on web sites and continues to display on the Internet.

6. Here is an example of Ms. Pankey’s infringing conduct. Ms. Pankey’s two Paintings are on the left. Each infringes Ms. Greenfield’s Photograph entitled *Landings Gibney* on the right.



*Quiet Chaos*



*Sometimes the Balls Drop*



*Landings Gibney*

7. The Paintings so imitate the copyrightable expressions in the Photographs that a web site displaying the Paintings glowed “you have to stop and stare at the [Pankey] paintings on the wall to make sure they’re actually paintings and not photos of men and women leaping and twirling in the air.” See [http://mysoutex.com/view/full\\_story\\_landing/21453611/article-Pankey-brings-canvas-to-life-at-CBC-art-exhibit](http://mysoutex.com/view/full_story_landing/21453611/article-Pankey-brings-canvas-to-life-at-CBC-art-exhibit).

### **BACKGROUND FACTS**

8. In 2012, a third party accused Ms. Pankey of infringing Ms. Greenfield’s copyrighted works.

9. In response, Ms. Pankey emailed Ms. Greenfield on December 7, 2012.

10. Ms. Pankey stated in that email, “I would very much like you [sic] permission to

study some of your black & white images that I can use in my paintings & alter them.”

11. Ms. Pankey added, “it is extremely difficult to get the twists & turns that you are able to capture with the figure.”

12. She concluded, “I am always looking for unusual images that I can work with.”

13. Ms. Greenfield declined to give permission but instead launched an investigation to determine the extent of Ms. Pankey’s infringements.

### **Ms. Pankey Fails to End Her Infringing Conduct**

14. Thereafter, by letter dated April 29, 2013, Ms. Greenfield demanded, among other things, that Ms. Pankey “[c]ease the sale, marketing, promotion, and distribution” of the Paintings.

15. In response, Ms. Pankey apologized (the “Apology”).

16. Ms. Pankey stated in that email, “I’M SORRY for harming another (which is what I have done).”

17. Ms. Pankey promised to “no longer paint from” Ms. Greenfield’s “black & white photos.”

18. Ms. Pankey also stated in that email that “[a]ll the paintings that relate in any way to your work have been taken off my website.”

19. Nevertheless, as alleged in more detail below, Ms. Pankey continues to this day to display and promote some of the Paintings on various websites, including YouTube, and has continued in her attempts to sell them.

### **Ms. Pankey Infringes Because She Is Unable to Independently Create Her Works**

20. Ms. Pankey, also in response to Ms. Greenfield’s demand letter of April 29 attempted to justify her infringing conduct at [www.justanswer.com](http://www.justanswer.com).

21. There she publicly admitted to “using ... [Ms. Greenfield’s] dance images to

paint oil paintings on canvas.”

22. Ms. Pankey explained, “[o]ver the years, I’ve been inspired by a photographer [referring to Ms. Greenfield] who took many photos of dancers moving through space, in Black and White. I used these photos as studies and subjects in some of my paintings because it is simply impossible to get people to pose in space or flight, frozen in time, for me to adequately capture their body language and positions twisting through space.”

23. In other words, because Ms. Pankey found it “impossible” independently to create figures in flight on a canvas without copying from Ms. Greenfield, Ms. Pankey appropriated and infringed Ms. Greenfield’s copyrighted works. This litigation follows.

#### **PARTIES**

24. Ms. Greenfield is a citizen of the United States residing in New York City.

25. Her photographs celebrate the unmistakable majesty of dancers in motion and the expressive potential of movement. The dancers in Ms. Greenfield’s photographs push the limits of the possible in non-repeatable and elusive moments. Museums and galleries around the world collect and display her imagery.

26. Ms. Greenfield is the author of *Breaking Bounds: The Dance Photography of Lois Greenfield*, published by Thames & Hudson, Ltd. England and France, Chronicle Books, USA and JICC Japan. Ms. Greenfield is also the author of *Airborne: the New Dance Photography of Lois Greenfield*, published by Thames & Hudson, Ltd. England and Chronicle Books, USA.

27. On information and belief, Ms. Pankey is a citizen of the United States residing in San Marcos, Texas.

28. Until recently she was on the art faculty at Texas State University.

### **JURISDICTION**

29. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (action arising under the laws of the United States) and 1338(a) (action arising under an Act of Congress relating to copyrights).

30. This action arises under the copyright laws of the United States, 17 U.S.C. § 101 *et seq.*

31. This Court has personal jurisdiction over Ms. Pankey pursuant to C.P.L.R. § 302(a)(1).

32. That is because Ms. Pankey has repeatedly transacted business in this state by exhibiting the Paintings at gallery shows hosted by Manhattan Arts International.

33. Ms. Pankey also promoted her work to New York residents by authorizing Manhattan Arts International to post on its web site at least one of the Paintings, *Into the Light*.

34. Venue is proper in this Court under 28 U.S.C. § 1400(a) (action relating to copyrights may be instituted in the district in which the defendant may be found).

### **BACKGROUND FACTS**

35. On information and belief, Ms. Pankey, sharing Ms. Greenfield's love of dance and the grace and elegance of motion, accessed Ms. Greenfield's photographs.

36. Ms. Pankey, admittedly unable to independently recreate the dancers' "twists and turns" Ms. Greenfield depicts in the Photographs, copied and incorporated those movements in the Paintings.

37. The Paintings also copy the poses, lighting, perspective, shape and composition of the Photographs.

38. The Paintings celebrate the graceful forms of bodies in motion and in unusual

configurations thereby conveying the same expression as the Photographs.

39. Ms. Pankey labeled the Paintings to reflect the celebration of movement with names like *Exploration*, *Energy Up*, *I Can Fly*, *Leap of Faith*, *Sometimes I Dream I Can Fly*, *Into the Light* and *Contemplating Men Who Spin*.

40. The names of Ms. Pankey's twenty-one Paintings at issue here are as follows:

- *Cling*
- *Contemplating Men Who Spin*
- *Energy Up*
- *Exploration*
- *Hearding Men*
- *I Can Fly*
- *Into the Light*
- *Law of Inertia*
- *Leap of Faith*
- *Maintaining Alpha*
- *Out of Sync*
- *Quiet Chaos*
- *Red Ribbon*
- *She Supports Him*
- *Sirens*
- *Sirens 2*
- *Sometimes I Dream I Can Fly*
- *Sometimes the Balls Drop*
- *Surrender*
- *Trance*
- *Trio*

41. Each of the 21 Paintings constitutes an unauthorized, and therefore, an infringing derivative work of at least one of the Photographs. Some Paintings appropriate multiple Photographs and two Paintings each infringe seven Photographs.

42. Below is a chart listing the 33 Photographs in alphabetical order and the 21 Paintings that infringe them.

No.	Photographs	Infringing Paintings			
1.	<i>A Roland &amp; D Ezralow</i>	<i>Sometimes I Dream I Can Fly</i>			
2.	<i>Airborne Cover</i>	<i>Leap of Faith</i>	<i>Sirens</i>	<i>Sirens2</i>	
3.	<i>Aviles Skirt</i>	<i>Trance</i>	<i>I Can Fly</i>		
4.	<i>Bresciani Duncan</i>	<i>Out of Synch</i>	<i>Trio</i>	<i>Surrender</i>	
5.	<i>Brown Solo</i>	<i>Red Ribbon</i>			
6.	<i>Buffy 01</i>	<i>Energy Up</i>	<i>Maintaining Alpha</i>	<i>Sirens2</i>	
7.	<i>Buffy 02</i>	<i>Maintaining Alpha</i>			
8.	<i>Buffy Ion</i>	<i>Sirens2</i>			
9.	<i>Buffy Leg In Air</i>	<i>Sirens</i>			
10.	<i>Buttermore</i>	<i>Sirens</i>	<i>Sirens 2</i>		
11.	<i>D &amp; R Weber</i>	<i>Hearding Men</i>			
12.	<i>D Parsons</i>	<i>Sometimes I Dream I Can Fly</i>			
13.	<i>D Parsons Floor</i>	<i>Surrender</i>			
14.	<i>Dan/Dave Falling Man</i>	<i>Out of Sync</i>			
15.	<i>Delcorso Feld 01</i>	<i>Trance</i>			
16.	<i>Delcorso Feld 02</i>	<i>Sirens 2</i>			
17.	<i>Fleming</i>	<i>Maintaining Alpha</i>			
18.	<i>Gallagher Duet</i>	<i>Sirens</i>	<i>Sirens 2</i>		
19.	<i>Gillis Upside Down</i>	<i>Trio</i>	<i>Surrender</i>		
20.	<i>ISO Cutty Sark</i>	<i>Law of Inertia</i>			
21.	<i>ISO Dance</i>	<i>Law of Inertia</i>			
22.	<i>Jones Handstand</i>	<i>Trance</i>	<i>Into the Light</i>		
23.	<i>Jones in Air</i>	<i>Into the Light</i>	<i>Sometimes I Dream I Can Fly</i>		
24.	<i>Landings Gibney</i>	<i>Quiet Chaos</i>	<i>Sometimes the Balls Drop</i>		



25.	Marsden, Stead/Lombardi	She Supports Him			
26.	Ocellus Pilobolus	Cling			
27.	Pinwheel	Contemplating Men Who Spin			
28.	R Weber	Hearding Men			
29.	Roland Cube	Exploration			
30.	Roland Flying	Trio	Surrender		
31.	Streb	Sometimes I Dream I Can Fly			
32.	Thompson	Exploration	Sirens	Sirens2	I Can Fly
33.	Thompson Duet Vevey	Sirens	Sirens 2	Exploration	

43. The complaint now compares side-by-side each Painting with the Photograph(s) the Painting infringes.

### **Eight Pankey Paintings That Each Infringe One Photograph**

#### **A. *Cling***



*Cling*



*Ocellus Pilobolus*

44. *Cling* is a wholesale appropriation of Ms. Greenfield's photograph *Ocellus Pilobolus*. (Ms. Greenfield has specially titled the Photographs to aid their identification for the Court.)

45. *Cling* copies the photograph's side view of two nearly naked dancers pressed



back to back, bending over so their heads are touching their legs. Their exterior (visible) arms clutch each other's legs (as in the Photograph) with their forearms forming a horizontal "V" and their hair visible just below their knees. *Cling* also recreates the shadow in the Photograph below each pair of feet and the dark area enclosed within the dancers' legs, backs and arms.

46. Ms. Pankey created the Painting by scaling up the Photograph, placing zebra-like stripes on the bodies of the dancers, adding a checkered floor and a colored background and moving the figures closer to the viewer. The pose, perspective and composition of *Cling* and *Ocellus Pilobolus* are identical.

### **B. *Energy Up***



*Energy Up*



*Buffy 01*

47. Ms. Pankey's *Energy Up* recasts the Photograph *Buffy 01*.

48. The Painting copies the dreamy, eyes-closed expression of the woman in the Photograph sitting on wooden-slatted floor. In both works the woman wears a translucent fabric and faces the viewer with her right hand raised above her head at a 90° angle above her right eye, left hand extending down to the ground past her pelvis and the form of her left breast emerging from the fabric.

49. *Energy Up* also recreates the folds in the fabric extending from right thigh to

knee and the 30° degree angle running from folded right knee to raised left knee.

50. *Energy Up* further mimics the backlit lighting and shadows in *Buffy 01*. *Energy Up* only colors the figure, fabric and floor and adds a checkered background.

51. The aesthetic of the Painting and the Photograph is the same.

**C. Sometimes the Balls Drop and Quiet Chaos**



*Sometimes the Balls Drop*



*Quiet Chaos*



*Landings Gibney*

52. Ms. Pankey's *Sometimes the Balls Drop* and *Quiet Chaos* are colorized versions of Ms. Greenfield's photograph *Landings Gibney*. The shapes of dancers in the Photograph are readily apparent in the Paintings and the poses and perspective of those Paintings and the Photograph are identical. Also copied is the studio lighting Ms. Greenfield conceived.

53. *Sometimes the Balls Drop* simply replaces the dancers' leotards with green stripes and adds ribbons, balls, a red and white checkered floor and an orange background.

54. *Quiet Chaos* also substitutes tattoo patterns for the dancers' leotards, adds a brown tint to their bodies, continues the tattoo pattern on the floor and background and moves the figures slightly closer to the viewer.

**D. *Contemplating Men Who Spin***



*Contemplating Men Who Spin*



*Pinwheel*

55. The Painting *Contemplating Men Who Spin* infringes the Photograph *Pinwheel*. The Photograph features four gymnasts, three of whom are in a somersault.

56. Ms. Greenfield's iconic image, like the other Photographs, is not a recreation of a moment in a dance performance. Ms. Greenfield conceived this image and choreographed the height of the dancers' jumps to form a near perfect circle in the air.

57. Ms. Pankey's *Contemplating Men Who Spin* copies the same circular tableau of four male dancers suspending three in the air as in the Photograph.

58. The airborne dancers in the Painting and the Photograph are nearly in the same positions in the arc of their jumps and strike the same poses. The only difference is that the middle airborne dancer in the Painting is slightly less rotated in his jump than his counterpart in the Photograph.

59. For instance, the face of the dancer on the left in *Contemplating Men Who Spin*, as in the Photograph, turns toward the viewer and seems to be slightly smiling with his left fingers touching his left thigh, again as in the Photograph. The Painting only crops a portion of that dancer's left elbow and right foot.

60. The faces of the other dancers in the Painting look towards the floor or ceiling

as in the Photograph.

61. The non-airborne dancer in the Painting, as in the Photograph, is crouched raising muscular arms with one finger pointing upward and with right leg raised at a 90° angle.

62. *Contemplating Men Who Spin* also copies the lighting in *Pinwheel*, including the shadows on the floor and on the dancers' bodies.

63. The Painting is another example of Ms. Pankey's admitted infringement carried out by copying "body language and positions twisting through space."

64. Ms. Pankey's additions in *Contemplating Men Who Spin* to the tableau of dancers depicted in the Photograph consist only of a young woman standing staring into space and tattoos, goggles on the dancers at the far right and left and colored squares on the floor and background.

#### **E. *She Supports Him***

65. Ms. Pankey's *She Supports Him* recreates the dancers and their poses in the Photograph *Marsden, Stead/Lombardi*, which Ms. Greenfield created in her studio.



*She Supports Him*



*Marsden, Stead/Lombardi*

66. The Painting copies the dancers in the precise acrobatic positions they appear in the Photograph along with the lighting that illuminates them.

67. *She Supports Him* also places the figures in the same square shape

composition as in *Marsden, Stead/Lombardi*.

68. Further, *She Supports Him* copies a number of details in the Photograph. For instance, the Painting, as does the Photograph, depicts the white cuff on the left hand of the male dancer, the slight bend of the knees of the female dancer and the ruffles her long skirt makes against the floor.

69. The Painting simply closes the space between the male and female dancers, adds street clothes to the male dancer and replaces his shoes with sneakers. The Painting also adds cowboy boots and a floating mask to the female dancer and colors her dress, the background and floor.

#### **F. Leap of Faith**

70. *Leap of Faith* imitates the cover photograph of Ms. Greenfield's book *Airborne*.



*Leap of Faith*



*Airborne Cover*

71. The Photograph captures signature movements of Martha Graham dancers which Ms. Greenfield created as a unique composition. *Airborne Cover* appears like a multiple exposure of one jump seen at three points of its arc.

72. The Martha Graham dancers in the Photograph are readily apparent in *Leap of Faith*. The Painting copies the poses, perspective, expression and lighting of this highly creative Photograph. For example, the dancer on the left in the Painting and Photograph both



display a shadow running diagonally from her left shoulder to her sacrum.

73. *Leap of Faith* simply closes the space between the dancers, adds an aqua colored amoeba-shaped material in the background and foreground and places blue blindfolds on the eyes of the dancers.

#### **G. *Red Ribbon***

74. *Red Ribbon* recreates the pose and perspective of the dancer in *Brown Solo*.



*Red Ribbon*



*Brown Solo*

75. That dancer's form is readily apparent in the Painting.

76. In *Red Ribbon*, as in the Photograph, the dancer looks up with head tilted back, left arm bent at the elbow, palm open with her right arm overhead clutching her right foot raised at a 90° angle and left foot tucked under her buttocks.

77. *Red Ribbon* adds only blue splotches to the dancer's body, wraps it in a ribbon and places the person on a checkered floor against a dark background.

#### **Five Pankey Paintings That Each Infringe Two Photographs**

##### **A. *Into the Light***

78. Ms. Pankey's *Into the Light* copies all three dancers in the Photograph *Jones in*

*Air* and two of the dancers (circled) in *Jones Handstand*.



*Into the Light*



*Jones in Air*



*Jones Handstand*

79. *Into the Light* recreates from left to center the same graceful airborne athleticism of the three dancers in *Jones in Air*. The recreation carefully copies the folds in the clothes of these leaping dancers, the ribbed chest in the dancer on the left and even the veins on his neck. The Painting further imitates the lighting in the Photograph.

80. The differences are minor. The right arm of the middle dancer in the Painting extends straight up while the same arm of the dancer in the Photograph extends back; and the Painting crops a portion of the face and right arm and shoulder of the dancer on the left in Photograph.

81. *Into the Light* places in the center bottom an inverted figure of the dancer now wearing cowboy boots copied (and circled) at the top center of *Jones Handstand*. *Into the Light* also copies the legs of dancer in the center of *Jones Handstand* (also circled) who is airborne leaping to the right.

82. *Into the Light* completes the infringement by mimicking the square shape of the Photographs adding only skin tones to the dancers and a lighter brown background.

### **B. Out of Sync**

83. *Out of Sync* is a carbon copy of the dancer in *Bresciani Duncan* and the falling



figure in *Dan/Dave Falling Man*. It appears as if Ms. Pankey cut out these dancers from the photographs, glued them onto her canvas and colorized them.



*Out of Sync*



*Bresciani Duncan*



*Dan/Dave Falling Man*

84. Ms. Pankey even copied the tiny shadows extending under the hands and feet of the dancers in the Photographs.

85. Ms. Pankey adds only color to the clothes, the floor and background and crops a small portion of the hair of the dancer in *Bresciani Duncan*.

### **C. Hearing Men**

86. The Painting *Hearing Men* infringes the Photographs *D & R Weber* and *R Weber*.



*Hearing Men*



*D & R Weber*



*R. Weber*

87. *Hearing Men* copies the pose, perspective and expression of the female

dancer in *D & R Weber* placing her on the left.

88. That dancer in *Hearding Men* holds the rope stretched along her arm in her left hand with her right arm inwardly rotated reaching toward her back, just as in the Photograph. Only her spine in the Painting is more rounded than in the Photograph.

89. *Hearding Men* places a mirror image of the dancer in *R. Weber* in the right foreground of the Painting, copying the placement of this dancer's legs and arms depicted in the Photograph. Further, the three fingers of his extended hand in the Painting touch a rope as in the Photograph.

90. *Hearding Men* completes the infringement by taking another Photograph of the dancer R. Weber this time from *D & R Weber* and placing him on the top center of the Painting. There his hands are together holding a rope as in the Photograph.

91. *Hearding Men* simply shows a headless Mr. Weber in a slightly different orientation with foot flexed, not pointed.

92. *Hearding Men* also copies the sculptural lighting in *D & R Weber* and *R Weber*.

93. Added are only skin tones to the dancers, a tattoo to the back of the female dancer and a colored background.

#### **D. Law of Inertia**

94. This painting combines the four figures in Ms. Greenfield's photograph *ISO Dance* with the inverted figure depicted on the right in the photograph *ISO Cutty Sark*.



*Law of Inertia*



*ISO Dance*



*ISO Cutty Sark*

95. *Law of Inertia* traces precisely the graceful confluence of 4 airborne bodies in *ISO Dance* cropping the right leg of the dancer on the left side of the frame.

96. *Law of Inertia* equally precisely presents a carbon copy on the far right of the dancer, her head close to the floor (and circled), in *ISO Cutty Sark*. The painting also copies the square shape of the Photographs.

97. Added to the Painting are only blue ribbons, skin tones and a brownish background.

98. The aesthetic of the Ms. Pankey and Painting are the same.

### **E. *I Can Fly***

99. The dancers in *Aviles Skirt* and *Thompson* are copies and recognizable in *I Can Fly*.



*I Can Fly*



*Aviles Skirt*



*Thompson*

100. The Painting on the left copies the dancer in *Aviles Skirt*, with knees bent, and arms reaching up to the ends of the flowing skirt as in the Photograph. The Painting simply colors the skirt, adds a skin tone and more hair to the dancer and raises the head slightly and decreases the angle of the arms.

101. The Painting on the right recreates a relaxed, wide-eyed Kathy Thompson, the dancer in *Thompson*, reorienting her position in the Painting.

102. Ms. Pankey colors Ms. Thompson's clothes, adds skin tone and a tattoo on Ms. Thompson's right forearm and places both dancers against a colored background.

#### **Four Pankey Paintings That Each Infringe Three Photographs**

##### ***A. Exploration***

103. *Exploration* cherry picks dancers from the Photographs *Thompson*, *Thompson Duet Vevey* and *Roland Cube*.



*Exploration*



*Thompson*



*Thompson Duet Vevey*



*Roland Cube*

104. *Exploration* on the left reproduces an aerial Kathy Thompson in the same pose she appears in *Thompson* with her right arm outwardly rotated and the fingers of her left hand touching her cheek. *Exploration* simply reorients her position cropping the right side of her head.

105. *Exploration* then centers a copy of the leaping dancer, again Kathy Thompson, depicted (and circled) in *Thompson Duet Vevey*. The Painting recreates in great detail Ms. Thompson's splayed legs, long arms extended below her torso, head tilted slightly to the right and curved back.

106. Ms. Pankey further imitates the poised athleticism of Ashley Roland in *Roland Cube* placing her on the right side of the Painting in the same pose as in the Photograph coloring her eyes and forehead blue and excluding only the cube in the Photograph.



107. Ms. Pankey also copies the sculptural lighting in the Photographs. For example, *Exploration* recreates the shadow in the space in *Thompson* between the dancer's left shoulder and thigh.

108. *Exploration* completes the infringement with stripes and skin tones on the dancers instead of clothes and a colored background with two intersecting lines.

### ***B. Maintaining Alpha***

109. *Maintaining Alpha* combines Ms. Greenfield's Photographs *Buffy 01*, *Buffy 02* and *Fleming*.



*Maintaining Alpha*



*Buffy 01*



*Buffy 02*



*Fleming*

110. *Maintaining Alpha* places colorized versions of the dancers of *Buffy 01* in the left background, *Buffy 02* in the center and *Fleming* in the right foreground and also captures the

Photographs' sculptural lighting.

111. For example, the Painting recreates the pool-like shadow extending in front of the seated dancer in *Buffy 01* and the shadows at the base of the dancer's left foot and hands in *Fleming*.

112. *Maintaining Alpha* simply elongates or stretches the dancers in *Buffy 02* and *Fleming*, adds a colorized floor and background and more detail to the feet of *Fleming*. Otherwise, the forms of the dancers in the Photographs are readily apparent in the Painting.

### **C. Trance**

113. *Trance* contains three of Ms. Greenfield's Photographs: from left to right, *Jones Handstand*, *Aviles Skirt* and *Delcorso Feld 01*.



*Trance*





*Jones Handstand*



*Aviles Skirt*



*Delcorso Feld 01*

114. *Trance* inserts on the left a copy of the vertical dancer in *Jones Handstand* (circled) eyes facing the viewer with his legs raised and with only a sliver of his body cropped. In the center *Trance* places a recreation of the dancer in *Aviles Skirt* capturing the circular ruffles and train of that skirt with the arm stretched a bit more to the right. On the right *Trace* copies the dancer in *Delcorso Feld 01*. *Trance* captures the energy the dancers expressed in the Photographs and also imitates the sculptural lighting in the Photographs.

115. *Trance* colorizes the dancers and background, adds masks to their faces and a bit more hair to the *Aviles* dancer.

#### **D. Trio**

116. *Trio* copies and combines the dancers in *Bresciani Duncan*, *Gillis Upside Down* and *Roland Flying* and captures the expressive energy in these Photographs.



*Trio*



*Bresciani Duncan*



*Gillis Upside Down*



*Roland Flying*

117. *Trio* places the dancer in *Bresciani Duncan* on the left in the exact same pose she appears in the Photograph.

118. *Trio* also retains the slatted floor in the *Bresciani Duncan*.

119. *Trio* centers a carbon copy of the dancer in *Gillis Upside Down*. In *Trio*, like the Photograph, the dancer's hair extends along the ground to her left; and again, as in the Photograph, the dancer in *Trio* touches her chin with her left hand and crosses her ankles.

120. *Trio* finally places a mirror image of *Roland Flying* on the right with her arm stretched back and legs tucked as in the Photograph.

121. The Painting simply adds more hair to the dancer in *Bresciani Duncan*, adds colors to the dancers' clothes, the floor and background along with skin tones and ribbons.

### Two Pankey Paintings That Infringes Four Photographs

#### A. Surrender

122. Ms. Pankey steps up her serial infringements with *Surrender*. It appropriates four of Ms. Greenfield's Photographs: *Gillis Upside Down*, *Bresciani Duncan*, *Roland Flying* and *D Parsons Floor*.



*Surrender*



*Bresciani Duncan*



*Roland Flying*



*D Parsons Floor*



*Gillis Upside Down*

123. *Surrender* on the left places a colorized copy of the dancer in *Bresciani Duncan*, cropping only a portion of her head. In the center foreground is Ms. Pankey's imitation of the dancer in *Roland Flying* who is oriented a bit more to the right.

124. In the center background is a copy of *D Parsons Floor* with ribbons, blue pants and boots added and to the right in *Surrender* is a recasted, colorized version of the dancer in *Gillis Upside Down* with her ankles and feet cropped.

125. *Surrender* painstakingly copies the shadows and lighting in the Photographs. For instance, the Painting recreates the snow angel shadow the legs of the *D Parsons Floor* dancer creates against the floor and maintains the same dark background as in that Photograph.

126. Ms. Pankey, having copied the dancers' "twists and turns," depicted by Ms. Greenfield, colors the dancers' clothes, adds skin tones, a colored floor.

***A. Sometimes I Dream I Can Fly***

127. *Sometimes I Dream I Can Fly* cherry picks all the dancers in *Jones In Air*, *Streb* and *A Roland & D Ezralow* and the dancer in *D Parsons*.



*Sometimes I Dream I Can Fly*



*Jones In Air*



© Lois Greenfield

*D Parsons*



*A Roland & D Ezralow*



Lois Greenfield

*Streb*

128. *Sometimes I Dream I Can Fly* contains a near perfect recreation of the three leaping dancers (all circled) in *Jones In Air*.

129. The Painting captures the folds in the pants and the ribbed chest of the dancer on the left in *Jones In Air* as well as the prominent vein in his neck. The Painting also recreates the female dancer in the center and the pose and perspective of the dancer on the right in that Photograph.

130. The Painting simply colors the dancers' clothing and adds cowboy boots to the dancers in the center and the right in *Jones In Air*.

131. The Painting on the bottom left adds a mirror image of *D Parsons*, his chest

sharply sculptured as in the Photograph, with the fingers of one hand draped over the other arm forming an inverted “v,” again as in the Photograph.

132. In the center of the Painting is a copy of the female dancer in *A Roland & D Ezralow* with eyes cast down, her right arm and leg extended forward and left arm raised, all as in the Photograph.

133. The Painting only colors her skirt and adds a cowboy boot to her left leg and skin tones.

134. The Painting on the right adds a carbon copy of the inverted male dancer in *Streb* (circled) with his arms stretched back and legs raised.

135. The Painting simple reorients that dancer so that his head and chest are more parallel to the ground, colors his clothes and adds skin tone and a brownish background.

### **Two Pankey Paintings That Infringe Seven Photographs**

#### **A. *Sirens***

136. Ms. Pankey accelerates her infringements with *Sirens* which combines seven of Ms. Greenfield's Photographs. Recognizable in *Sirens* are the dancers in four Photographs: *Buttermore*, *Delcorso Feld 02*, *Thompson* and *Buffy Leg in Air* and one of the dancers in three others, *Thompson Duet Vevey*, *Gallagher Duet* and *Airborne Cover*.



*Sirens*





*Delcorso Feld 02*



*Thompson*



*Thompson Duet Vevey*



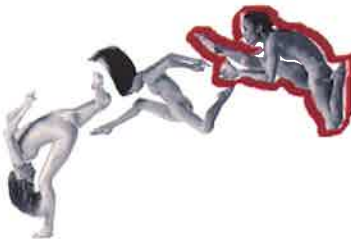
*Buffy Leg in the Air*



*Gallagher Duet*



*Buttermore*



*Airborne Cover*

137. At the rear left of *Sirens* is a copy of the dancer *Delcorso Feld 02* posed exactly



as she appears in the Photograph with her left hand draped over her neck. Only the most of her head is cropped in the Painting.

138. To the right of *Delcorso Feld 02* and at the top is a recreation of *Thompson*, including the dark shadows extending from the dancer's neck to thigh. The Painting only crops a portion of her head and eyes with a portion of her leg obscured behind one of the figures in *Gallagher Duet*.

139. Next to *Thompson* is a copy of the dancer Kathy Thompson in *Thompson Duet Vevey*. The Painting captures her splayed legs and long arms depicting her exactly as in the Photograph with only a portion of the top of her head cropped.

140. In the middle rear of the painting, partially hidden behind the female dancer in *Gallagher Duet*, is a copy of *Buffy Leg in the Air*. Buffy in the Painting has the same right leg raised at nearly a 90 ° angle and head angled toward her left foot as in the Photograph.

141. In the front left of *Sirens* is a reoriented image of the dancer on the far right in the *Airborne Cover* (circled) with her hands pressed together, one leg raised close to her chest and foot pointed all as in the Photograph.

142. In the front center is the female in *Gallagher Duet* (again circled) with her leotard replaced by a circular tattoo pattern.

143. *Sirens* recreates her in the same pose as in the Photograph with arms extending past her head and hands pressed together and copies its sculptural lighting darkening her pelvic area, as in the Photograph. *Sirens* simply elongates the dancer's extension to the left.

144. In the front right is the mirror image of the two dancers in *Buttermore*; their arms and legs are intertwined in the Painting as in the Photograph.

145. The Painting combines these eight dancers captured in the seven Photographs

and replaces some of the dancers' leotards with colored tattoos and including a checkered floor and background.

### **B. *Sirens2***

146. Ms. Pankey's wholesale appropriation of Ms. Greenfield's Photographs continues with *Sirens2*. It copies all the dancers in four photographs, *Buttermore*, *Thompson*, *Buffy Ion* and *Buffy 01* and includes one of the dancers in three more, *Thompson Duet Vevey*, *Gallagher Duet* and the *Airborne Cover*.



*Sirens2*



*Buttermore*



*Thompson Duet Vevey*



*Thompson*



Lois Greenfield

*Buffy Ion*

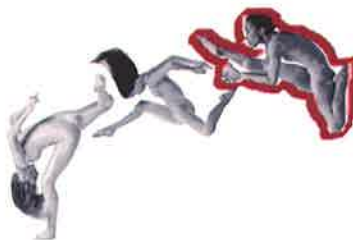


Lois Greenfield

*Gallagher Duet*



*Buffy 01*



Lois Greenfield

*Airborne Cover*

147. At the rear left of *Sirens2* is a colorized copy of the dancers in *Buttermore* in the same pose as in the Photograph.

148. To the right of that copy is a mirror image of Kathy Thompson in *Thompson Duet Vevey* (circled).

149. In the upper right hand corner is the mirror image of *Thompson* rotated with a slice of her head, back and buttocks cropped.

150. Below *Thompson* is a mirror image of *Buffy 01* still wearing the same translucent fabric and the dreamy expression with the folds in the fabric in the Painting recreated as in the Photograph.

151. In the left foreground is a copy of the bat-like dancer in *Buffy Ion* with legs now candy-striped and with her facial expression in the Painting exactly as in the Photograph.

152. In the center the Painting copies a reoriented image of the female dancer in *Gallagher Duet* her arms stretched back alongside her ears in the Painting as in the Photograph.

153. On the right in *Sirens2* is the reoriented figure of a Martha Graham dancer that appears also on the right in the *Airborne Cover* (circled).

154. As with *Sirens*, *Sirens2* replaces some of the dancers' leotards with tattoo colored swirls and includes a checkered backdrop and floor.

#### **How She Does It**

155. On information and belief, Ms. Pankey was only able (as she says on the justanswer.com site) "to capture their [the dancers'] body language and positions twisting through space" by painting with one hand and holding in the other the photograph to be copied. Here are two screen shots from her YouTube videos reflecting her method of painting.



**Jill Pankey On Painting: <http://www.jillpankey.com>**





### **Ms. Pankey's Exploitation and Promotion of the Paintings**

156. On information and belief, Ms. Pankey has repeatedly promoted and monetized the Paintings by:

a. offering the Paintings for sale at various galleries and exhibitions, including in the United States: the Russell Gallery; Teal Art Gallery; Craighead Green; La Posada de Santa Fe; Galeria Ortiz Contemporary; Courtyard Gallery; Kirchman Gallery; Bancroft & Dillon; Manhattan Arts International; Square One Studio; the Simon Michael Art Gallery at Coastal Bend College and at the Just Imagine Art Gallery in New Zealand;

b. copying and reproducing the Paintings in her book *Drawings & Paintings* published by Blurb Publishing in 2008 which had been online at <http://www.blurb.com/b/1219603-paintings-and-drawings-by-jill-pankey>;

c. including the Paintings in three videos on YouTube which continue to remain online to date;

d. authorizing Manhattan Arts International to post the Paintings on its online exhibition gallery;

e. authorizing the Irving Art Association to display the Paintings where they remain on its website at <http://irvingart.ipower.com/iaawordpress/jill-pankey-demo-on-the-creative-figure-march-26/> even though Pankey months ago was requested to take down all such infringements; and

f. authorizing third parties to post the Paintings on web sites to promote Ms. Pankey's gallery shows, including at [http://mysoutex.com/view/full\\_story\\_landing/21453611/article-Pankey-brings-canvas-to-life-at-CBC-art-exhibit](http://mysoutex.com/view/full_story_landing/21453611/article-Pankey-brings-canvas-to-life-at-CBC-art-exhibit) (subscription required).

157. Further, Ms. Pankey had used two of the Paintings as her brand, placing *Sirens2* and *Law of Inertia* on the home page of her website at [www.jillpankey.com](http://www.jillpankey.com), as reflected below.





**MS. GREENFIELD'S COPYRIGHT OWNERSHIP**

158. At all times Ms. Greenfield has been the copyright owner of the Photographs.

159. The Photographs are copyrightable subject matter under the laws of the United States and have been timely registered with the United States Copyright Office.

160. The names, dates of registration and registration numbers of the Infringed Photographs are:

	<b>Photograph</b>	<b>Registration Numbers: all VA unless otherwise indicated</b>	<b>Dates of Registration</b>
1.	<i>Thompson Duet Vevey</i>	950556	August 18, 1998
2.	<i>Buttermore</i>	950556	August 18, 1998
3.	<i>Ocellus Pilobolus</i>	950556	August 18, 1998
4.	<i>Buffy 01</i>	950556	August 18, 1998
5.	<i>Buffy 02</i>	922234	June 28, 1996
6.	<i>Delcorso Feld 01</i>	950556	August 18, 1998
7.	<i>Delcorso Feld 02</i>	950556	August 18, 1998
8.	<i>Gallagher Duet</i>	922234	June 28, 1996
9.	<i>Fleming</i>	950556	August 18, 1998
10.	<i>Roland Cube</i>	950556	August 18, 1998
11.	<i>Aviles Skirt</i>	922234	June 28, 1996
12.	<i>Landings Gibney</i>	950556	August 18, 1998
13.	<i>Airborne Cover</i>	950556	August 18, 1998
14.	<i>Pinwheel</i>	791522	July 15, 1996
15.	<i>Gillis Upside Down</i>	950556	August 18, 1998
16.	<i>Thompson</i>	950556	August 18, 1998
17.	<i>Streb</i>	950556	August 18, 1998
18.	<i>Brown Solo</i>	VAu400905	June 24, 1997
19.	<i>A Roland &amp; D Ezralow</i>	950556	August 18, 1998
20.	<i>ISO Dance</i>	786078	March 20, 1996
21.	<i>Jones Handstand</i>	786078	March 20, 1996
22.	<i>Buffy Leg In Air</i>	786078	March 20, 1996
23.	<i>Buffy Ion</i>	786078	March 20, 1996
24.	<i>Bresciani Duncan</i>	786078	March 20, 1996
25.	<i>Roland Flying</i>	786078	March 20, 1996
26.	<i>D &amp; R Weber</i>	786078	March 20, 1996
27.	<i>R Weber</i>	786078	March 20, 1996
28.	<i>ISO Cutty Sark</i>	786078	March 20, 1996
29.	<i>D Parsons</i>	786078	March 20, 1996

30.	<i>Dan/Dave Falling Man</i>	786078	March 20, 1996
31.	<i>Jones In Air</i>	786078	March 20, 1996
32.	<i>D Parsons Floor</i>	786078	March 20, 1996
33.	<i>Marsden, Stead/Lombardi</i>	786078	March 20, 1996

161. Ms. Greenfield has complied in all respects with 17 U.S.C. §§ 101 *et seq.* and all other laws of the United States governing copyright.

### **CLAIM FOR COPYRIGHT INFRINGEMENT**

162. Ms. Greenfield repeats and realleges ¶¶ 1 through 161 above.

163. Ms. Greenfield has the exclusive right under § 106 of the Copyright Act to reproduce, distribute, display or produce derivative works of her photographs.

164. Ms. Pankey has willfully and repeatedly infringed Ms. Greenfield's § 106 exclusive rights by copying and reproducing the Photographs.

165. Ms. Pankey has further willfully infringed Ms. Greenfield's § 106 exclusive rights by creating the Paintings that are unauthorized derivative works of the Photographs.

166. Ms. Pankey's willfulness in wrongfully appropriating the Photographs is evident from the following:

#### **Ms. Pankey Never Received Authorization Before Copying the Photographs**

a. Ms. Pankey, a highly educated, long-time member of the art faculty at various colleges, with a master's degree both in Interdisciplinary Studies and Fine Arts, knows or is charged with the knowledge that she cannot copy another's copyrighted work and call it her own. Yet that is exactly what Ms. Pankey has deliberately done for years with respect to the Photographs;

b. Ms. Pankey also understands that, before she can appropriate another's copyrighted work, she needs authorization;

c. Ms. Pankey reflected that understanding after a third party accused Ms. Pankey of copyright infringement. In response, she emailed Ms. Greenfield on December 7, 2012, seeking permission to “alter” her photographs;

**Ms. Pankey Continues to Display the Paintings**

d. Even though Ms. Greenfield never gave Ms. Pankey permission, she has continued to promote, display and sell the Paintings;

e. For instance, Ms. Pankey promoted a recent exhibition at Simon Michael Art Gallery at Coastal Bend College by authorizing a third party to post *Sometimes the Balls Drop, Move With Me or Get Out of the Way* and *I Can Fly*;

f. Here is a screen shot of a portion of that web page.

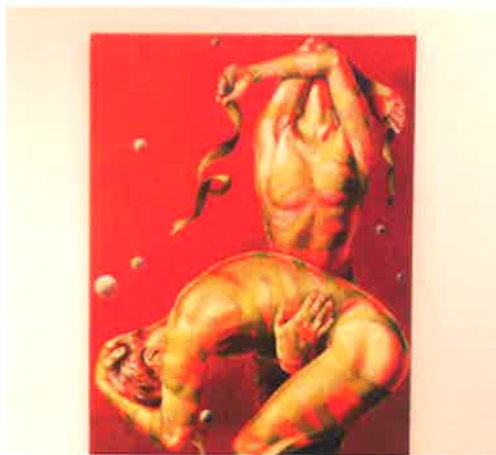
## Pankey brings canvas to life at

by Paul Gonzales

5 months ago | 2037 views | 0 | 5 | |



*Ms. Pankey speaks to art students at the Coastal Bend College campus in Del Valle Thursday Jan. 15. She talks about her life teaching and finally retiring to pursue painting full time. The gallery program is the latest addition to the college's art program.*



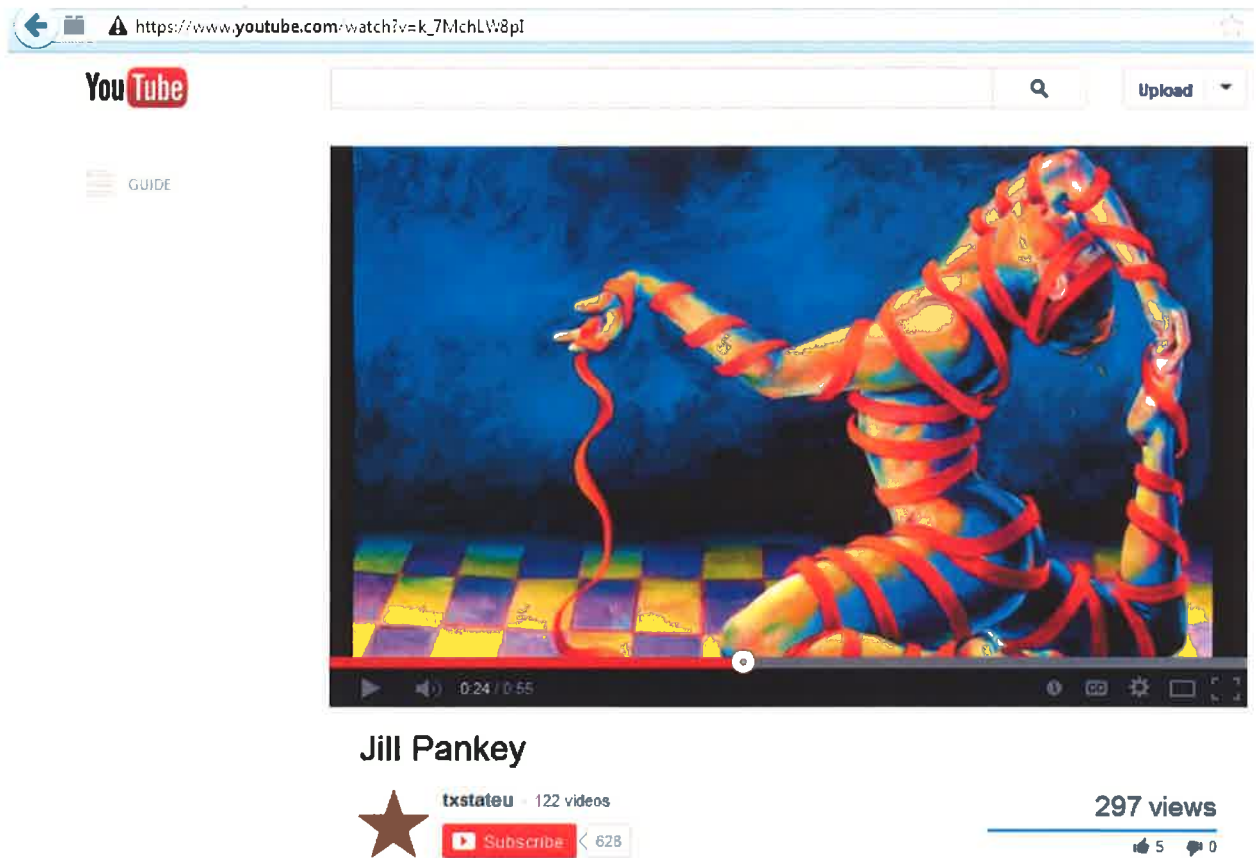
### **Ms. Pankey Failed to Direct YouTube to Remove the Videos of the Paintings**

167. Further, although Ms. Greenfield demanded by letter of April 29, 2013, that Ms. Pankey direct YouTube to remove all the videos containing the Paintings from the Internet, Ms. Pankey has failed to do so.

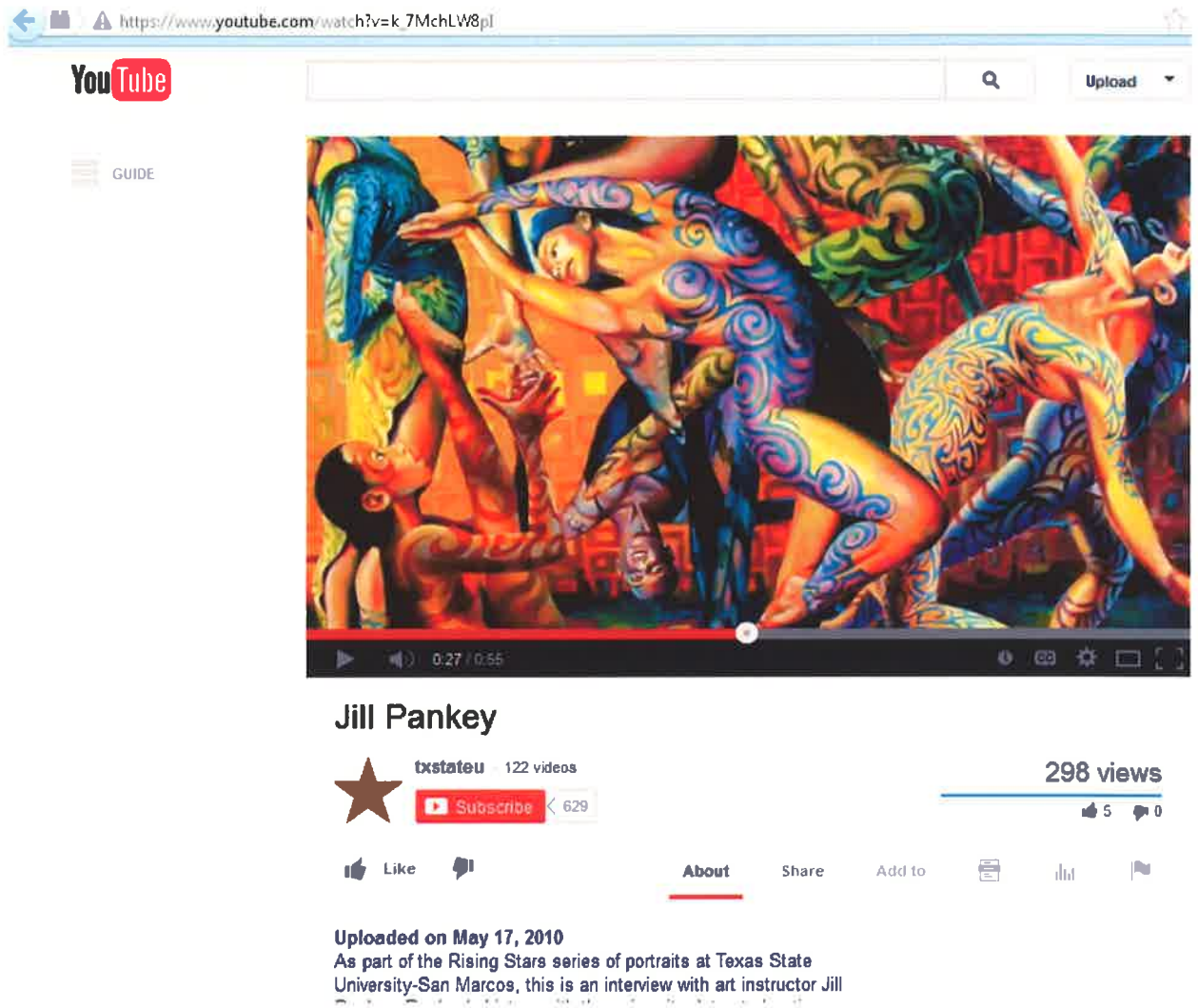
168. Instead, on information and belief, YouTube continues to display some of the Paintings in at least three videos set forth below, the third of which Ms. Pankey had posted after she received Ms. Greenfield's demand letter of April 29 and after Ms. Pankey issued the

Apology.

169. The first video at [http://www.youtube.com/watch?v=k\\_7MchLW8pI](http://www.youtube.com/watch?v=k_7MchLW8pI) displays *Red Ribbon* as evidenced by this screen shot:

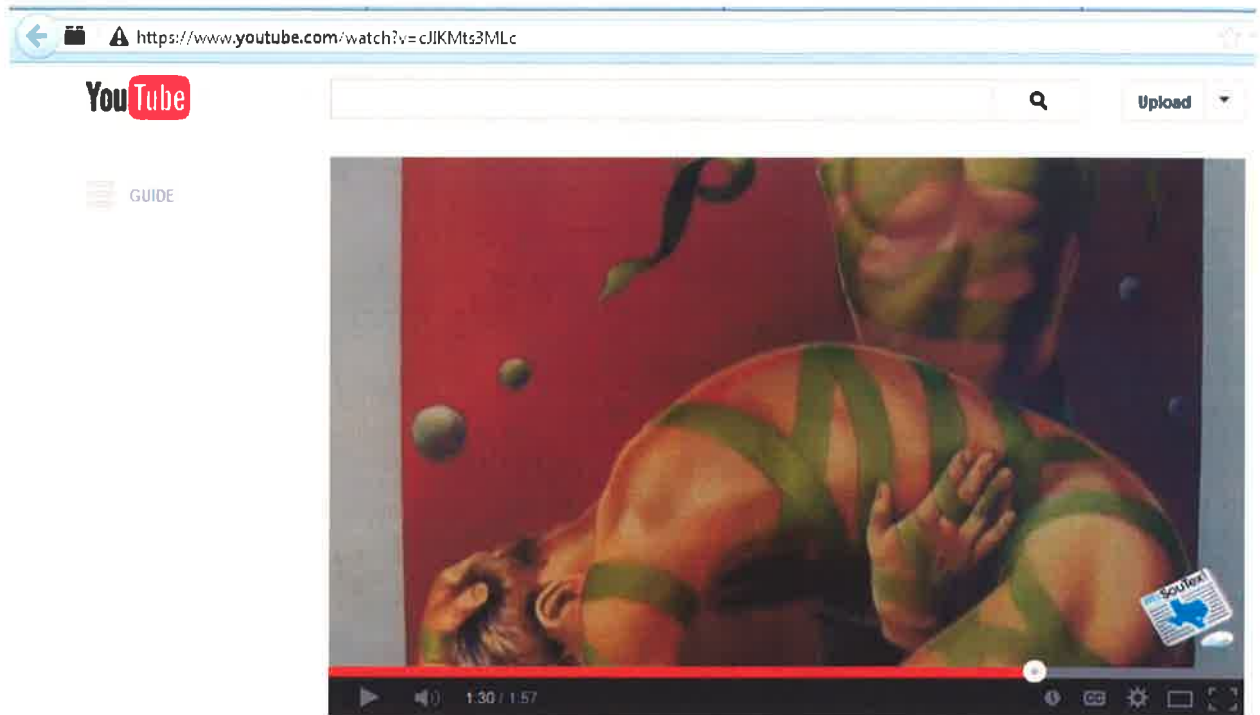


170. This video further displays *Sirens*:



171. The second video on YouTube at <http://www.youtube.com/watch?v=cJIKMts3MLc> displays *Sometimes the Balls Drop*:





**Jill Pankey: Bringing the Canvas to Life**

172. This same video also posts *I Can Fly*:



### **Ms. Pankey Continues to Attempt to Sell the Paintings**

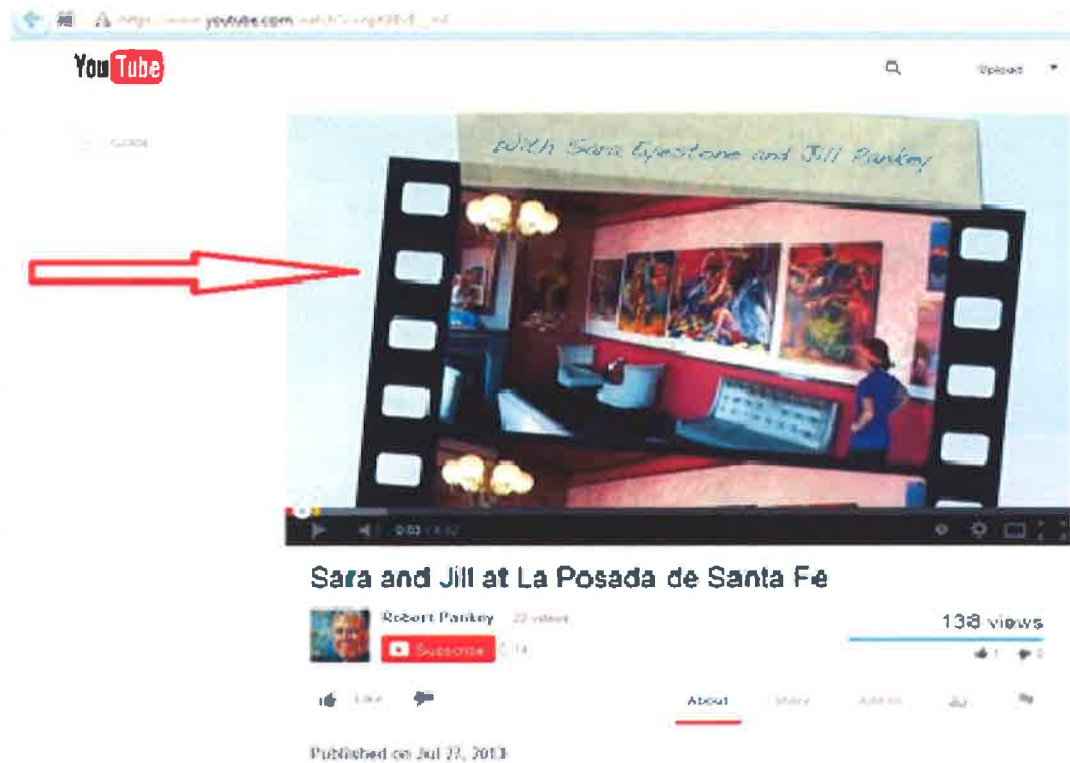
173. On information and belief, Ms. Pankey had her husband post the third video on YouTube three months after Ms. Greenfield demanded Ms. Pankey end her infringements.

174. On information and belief that video at [http://www.youtube.com/watch?v=npK9BvB\\_mI](http://www.youtube.com/watch?v=npK9BvB_mI) does not simply display two of the Paintings but depicts Ms. Pankey promoting their sale during the summer of 2013 at the Posada de Santa Fe venue in New Mexico.

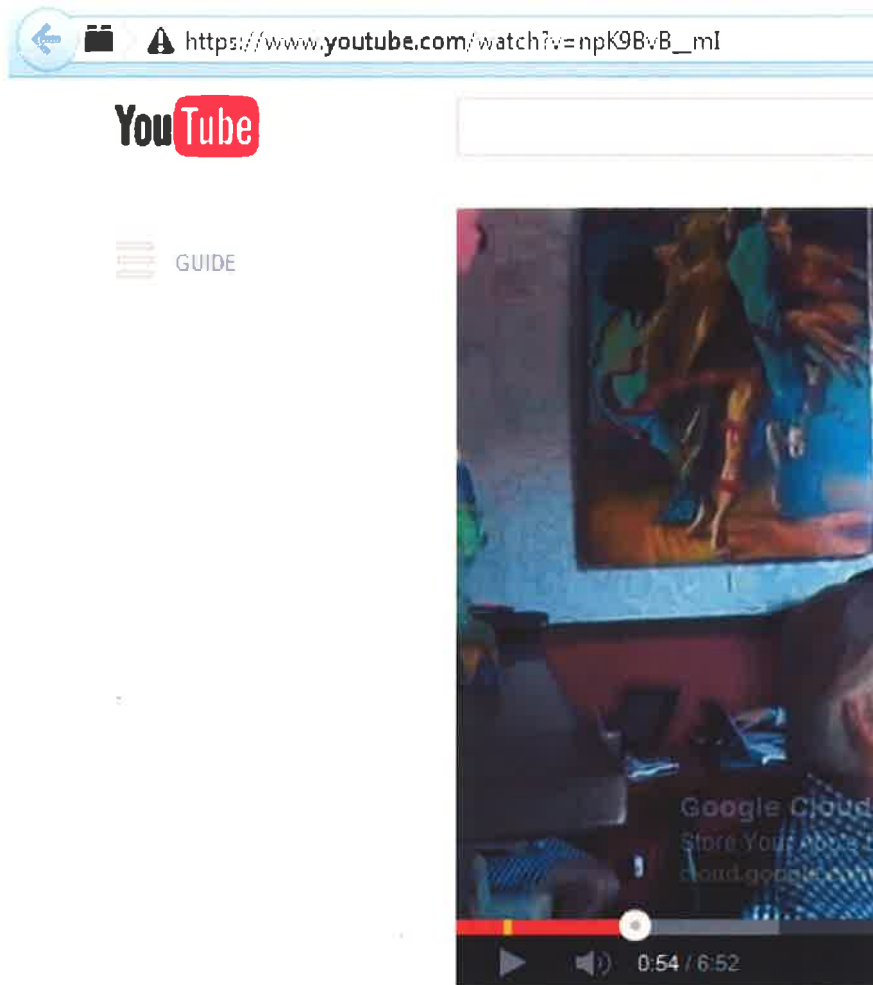
175. Two Paintings are visible in that video: *Sometimes the Balls Will Drop* and *Trio*.

176. Here is *Sometimes the Balls Will Drop* displayed on that video. We have added the

arrow for the convenience of the Court:



177. Here is *Trio*:

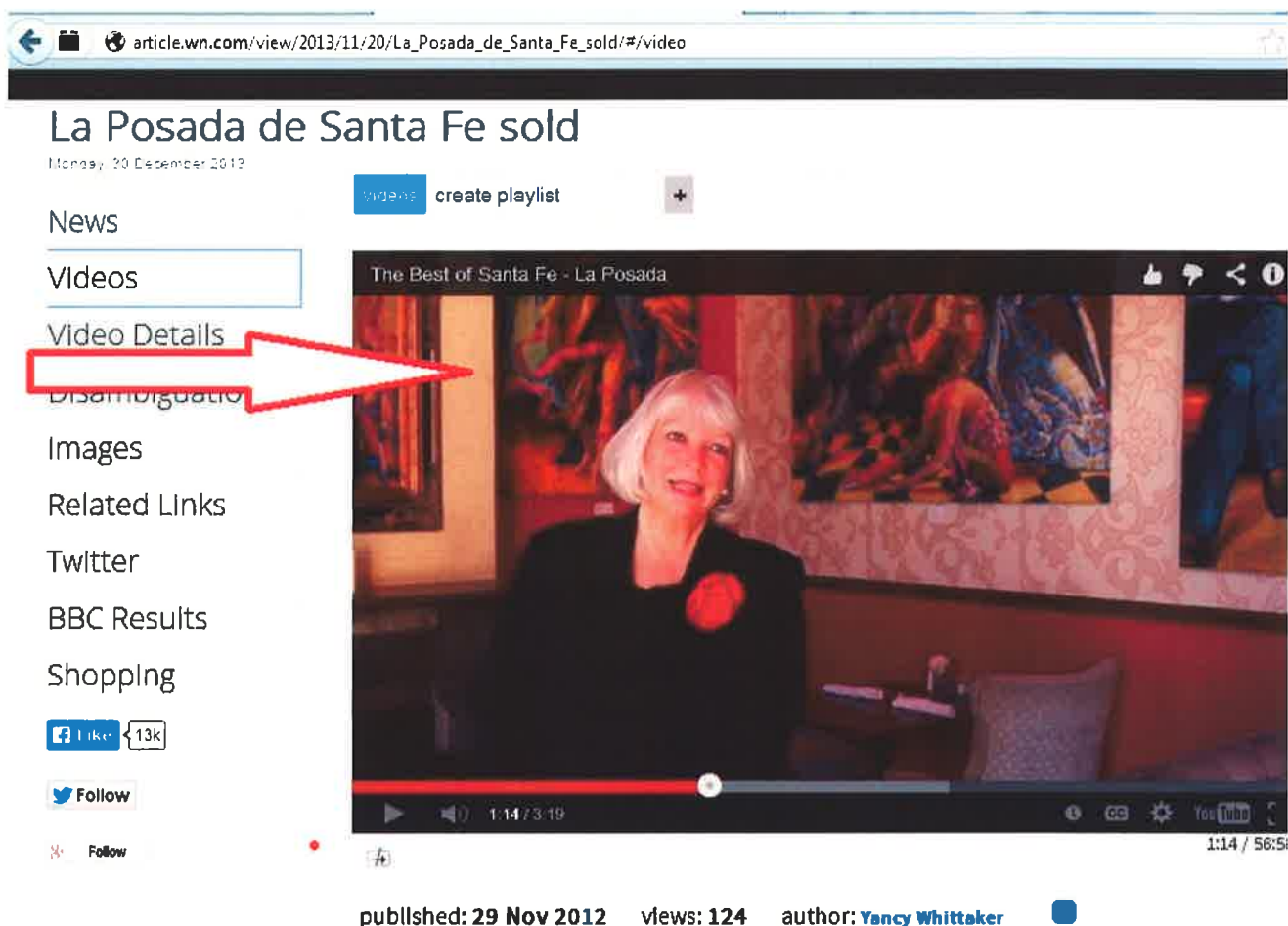


178. That all three YouTube videos continue to remain online to date, eight months after Ms. Greenfield demanded that Ms. Pankey take them down, demonstrates Ms. Pankey's willful disregard of Ms. Greenfield's rights.

179. Moreover, Ms. Pankey's attempts in the summer of 2013 to sell two of the Paintings at La Posada de Santa Fe, months after the Apology, and after Ms. Greenfield directed Ms. Pankey to cease all sales of the Paintings, is another example of Ms. Pankey's willful conduct.

180. In addition, Ms. Pankey's marketing efforts with respect to the Paintings continue.

181. Here is a video posted by La Posada de Santa Fe in late November 2013 displaying *Trio* (with the arrow added for the convenience of the Court).



182. These willful infringements have damaged Ms. Greenfield in a number of ways, including harming her professional reputation, diluting the value of the Photographs and interfering with her right to create potential derivative works.

183. That damage will continue to be irreparable unless enjoined by this Court. Accordingly, Ms. Greenfield has no adequate remedy at law.

**WHEREFORE**, Ms. Greenfield demands judgment:

(1) finding that Ms. Pankey has violated 17 U.S.C. § 106 by infringing Ms. Greenfield copyrights in the Photographs;

(2) permanently enjoining Ms. Pankey, her agents, servants and all those acting in concert or participation with them, from infringing Ms. Greenfield copyrights in the Photographs;

(3) requiring Ms. Pankey to deliver to Ms. Greenfield for destruction or other disposition all copies of the Paintings in Ms. Pankey's possession and on display at galleries and also requiring the delivery of any other materials from which Ms. Pankey might reproduce the Paintings;

(4) ordering Ms. Pankey to produce within thirty days after the entry of final judgment a written statement under oath setting forth in detail the manner and form in which it has complied with this Court's judgment; and

(5) awarding Ms. Greenfield her actual damages resulting from Ms. Pankey's infringing conduct together with the profits Ms. Pankey earned attributable to her creation of the Paintings, or in the alternative;

(6) awarding Ms. Greenfield maximum statutory damages of \$150,000 for each of the 33 Photographs that Ms. Pankey has willfully infringed, totaling \$750,000 and her costs and disbursements incurred in this action including Ms. Greenfield's attorneys' fees; and



(7) for such other and further relief as may be just.

Dated: December 27, 2013

Tannenbaum Helpert Syracuse & Hirschtritt LLP

By:



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